

|   |   |                            |
|---|---|----------------------------|
| VIACOM INTERNATIONAL INC., ET AL.,            | ) | ECF Case                   |
|   | ) |                            |
| Plaintiffs,                                   | ) | Civil No. 07-CV-2103 (LLS) |
| v.  | ) |                            |
|   | ) | DECLARATION OF             |
| YOUTUBE, INC., ET AL.,                        | ) | ARTHUR CHAN                |
|   | ) |                            |
| Defendants.                                   | ) |                            |
|   | ) |                            |
|   | ) |                            |
|   | ) |                            |
| THE FOOTBALL ASSOCIATION                      | ) |                            |
| PREMIER LEAGUE LIMITED, ET AL., on            | ) |                            |
| behalf of themselves and all others similarly | ) | ECF Case                   |
| situated,                                     | ) |                            |
|   | ) | Civil No. 07-CV-3582 (LLS) |
| Plaintiffs,                                   | ) |                            |
| v.  | ) |                            |
|   | ) |                            |
| YOUTUBE, INC., ET AL.,                        | ) |                            |
|   | ) |                            |
| Defendants.                                   | ) |                            |
|   | ) |                            |

1. I am over the age of 18 and have personal knowledge of the matters set forth in this declaration. If called as a witness, I could and would testify competently to the matters stated herein.

**1**

development, media planning, buying, and creative services for online as well as all forms of new media.

3. PMG has worked with a diverse client base including several companies in the television and film entertainment industry such as Paramount Vantage (a division of Paramount Pictures), Miramax Films, The Weinstein Company, Metro Goldwyn Mayer, United Artists, Spike TV, HBO, New Line Cinema, and Electronic Arts.

4. In the course of performing marketing services on behalf of our clients, PMG created and/or used several YouTube accounts with usernames that include "MiramaxFilm," "PalisadesMediaGroup," "Palisadesmg," "rubixkid," "EarlScheib," "LionsForLambs," "HalloweenDVD," "CollegeTheMovie," "TheWeinsteinCompany," "peachesruffhaus," "peacheslarue," "iheartdanec," "Pezcity," "moviemove," "chicagopictures," and other usernames. PMG employees used these YouTube accounts to upload to the YouTube website content either owned by PMG clients or content that PMG clients were authorized to distribute. Although the content PMG employees uploaded to the YouTube website was always provided by its clients and expressly authorized by them to appear on the YouTube service, PMG did not always contact YouTube to advise YouTube of these facts directly. We understand that much of this content was subsequently removed from the YouTube service by YouTube at the request of the purported copyright owners following YouTube's receipt of takedown notices.

5. Using the "MiramaxFilm" YouTube account, PMG employees uploaded video clips, including the following, to the YouTube service to promote a 2007 film titled "No Country for Old Men" that was co-produced by PMG's client Miramax Films and Paramount Pictures:

| Video Title   | Video URL   |
|---|---|
| Miramax Films: No Country For Old Men - 2 Million Dollars | <a href="http://www.youtube.com/watch?v=_3Uz_7Pv9Os">http://www.youtube.com/watch?v=_3Uz_7Pv9Os</a> |

|  |   |
|--|---|
| Miramax Films: No Country For Old Men - Buenos Dias    | <a href="http://www.youtube.com/watch?v=BxIE1HZA11A">http://www.youtube.com/watch?v=BxIE1HZA11A</a> |
| Miramax Films: No Country For Old Men - Phone Call     | <a href="http://www.youtube.com/watch?v=d93VLmvqhiA">http://www.youtube.com/watch?v=d93VLmvqhiA</a> |
| Miramax Films: No Country For Old Men - Call It        | <a href="http://www.youtube.com/watch?v=hSu8M4oxd88">http://www.youtube.com/watch?v=hSu8M4oxd88</a> |
| Miramax Films: No Country For Old Men - It's a Mess    | <a href="http://www.youtube.com/watch?v=sQjO5I56h9M">http://www.youtube.com/watch?v=sQjO5I56h9M</a> |
| Miramax Films: No Country For Old Men - Going Out      | <a href="http://www.youtube.com/watch?v=u_xavx4_Ctg">http://www.youtube.com/watch?v=u_xavx4_Ctg</a> |
| Miramax Films: No Country For Old Men - No Information | <a href="http://www.youtube.com/watch?v=uJdf1Mnrl5s">http://www.youtube.com/watch?v=uJdf1Mnrl5s</a> |

6. The video clips residing at the URLs referenced in the preceding paragraph were provided to PMG by its client Miramax Films and were authorized to be on the YouTube service so that PMG could promote Miramax Films' new film "No Country for Old Men." Those videos clips are from the film "No Country for Old Men," each about one minute in length. Miramax Films gave PMG authorization to upload these video clips to YouTube. These video clips, however, are no longer available on the YouTube service and attempts to access them return the message: "This video is no longer available due to a copyright claim by Viacom International."

7. Using the "EarlScheib" YouTube account, PMG employees uploaded video clips on behalf of PMG client Earl Scheib to promote Earl Scheib's business. These video clips were provided to PMG by Earl Scheib and were authorized to be on the YouTube service. One of these clips, titled "Earl Scheib on Rob & Big!" located at <http://www.youtube.com/watch?v=LhO5SzZz9xQ>, was a one-minute video clip from the MTV reality television show "Rob & Big" of a conversation with an Earl Scheib employee regarding Earl Scheib's business. The video clip was filmed on the premises of Earl Scheib. Earl Scheib gave PMG authorization to upload this video clip to YouTube. This video clip, however, is no longer available on the YouTube service and

attempts to access it return the message: "This video is no longer available due to a copyright claim by Viacom International."

8. Other video clips uploaded to the YouTube service by PMG employees with the understanding that PMG had authorization to do so include the following:

| PMG Username        | Video URL   |
|---------------------|---|
| CollegeTheMovie     | <a href="http://www.youtube.com/watch?v=1OB5GyxgwTQ">http://www.youtube.com/watch?v=1OB5GyxgwTQ</a> |
| CollegeTheMovie     | <a href="http://www.youtube.com/watch?v=jy-K4wNrLI0">http://www.youtube.com/watch?v=jy-K4wNrLI0</a> |
| CollegeTheMovie     | <a href="http://www.youtube.com/watch?v=mTpriPUo1bM">http://www.youtube.com/watch?v=mTpriPUo1bM</a> |
| CollegeTheMovie     | <a href="http://www.youtube.com/watch?v=GoH0tKHx_-Y">http://www.youtube.com/watch?v=GoH0tKHx_-Y</a> |
| CollegeTheMovie     | <a href="http://www.youtube.com/watch?v=ZPx2JuF8x8A">http://www.youtube.com/watch?v=ZPx2JuF8x8A</a> |
| EarlScheib          | <a href="http://www.youtube.com/watch?v=o6w1TouEFd0">http://www.youtube.com/watch?v=o6w1TouEFd0</a> |
| EarlScheib          | <a href="http://www.youtube.com/watch?v=tWseUYD3gcA">http://www.youtube.com/watch?v=tWseUYD3gcA</a> |
| EarlScheib          | <a href="http://www.youtube.com/watch?v=0o2bW2A29VI">http://www.youtube.com/watch?v=0o2bW2A29VI</a> |
| EarlScheib          | <a href="http://www.youtube.com/watch?v=IEeqCwvOHHo">http://www.youtube.com/watch?v=IEeqCwvOHHo</a> |
| HalloweenDVD        | <a href="http://www.youtube.com/watch?v=hCseqlbhqUE">http://www.youtube.com/watch?v=hCseqlbhqUE</a> |
| HalloweenDVD        | <a href="http://www.youtube.com/watch?v=4j83AAGT2V4">http://www.youtube.com/watch?v=4j83AAGT2V4</a> |
| HalloweenDVD        | <a href="http://www.youtube.com/watch?v=X565b1JL4Bk">http://www.youtube.com/watch?v=X565b1JL4Bk</a> |
| iheartdanec         | <a href="http://www.youtube.com/watch?v=-Ccn_qiynlY">http://www.youtube.com/watch?v=-Ccn_qiynlY</a> |
| LionsForLambs       | <a href="http://www.youtube.com/watch?v=n_V6ulwA0KE">http://www.youtube.com/watch?v=n_V6ulwA0KE</a> |
| LionsForLambs       | <a href="http://www.youtube.com/watch?v=AKOiM_cGF0s">http://www.youtube.com/watch?v=AKOiM_cGF0s</a> |
| LionsForLambs       | <a href="http://www.youtube.com/watch?v=fWbHCktmKWU">http://www.youtube.com/watch?v=fWbHCktmKWU</a> |
| LionsForLambs       | <a href="http://www.youtube.com/watch?v=yd7WNd9YsLw">http://www.youtube.com/watch?v=yd7WNd9YsLw</a> |
| LionsForLambs       | <a href="http://www.youtube.com/watch?v=hTO3JM6aj3s">http://www.youtube.com/watch?v=hTO3JM6aj3s</a> |
| LionsForLambs       | <a href="http://www.youtube.com/watch?v=99gmeID15V4">http://www.youtube.com/watch?v=99gmeID15V4</a> |
| LionsForLambs       | <a href="http://www.youtube.com/watch?v=k95TfmeEWAE">http://www.youtube.com/watch?v=k95TfmeEWAE</a> |
| LionsForLambs       | <a href="http://www.youtube.com/watch?v=iGYEGWx4IAI">http://www.youtube.com/watch?v=iGYEGWx4IAI</a> |
| LionsForLambs       | <a href="http://www.youtube.com/watch?v=j_V00FlePek">http://www.youtube.com/watch?v=j_V00FlePek</a> |
| LionsForLambs       | <a href="http://www.youtube.com/watch?v=j1jUjvFP978">http://www.youtube.com/watch?v=j1jUjvFP978</a> |
| LionsForLambs       | <a href="http://www.youtube.com/watch?v=p963kPgF3e8">http://www.youtube.com/watch?v=p963kPgF3e8</a> |
| LionsForLambs       | <a href="http://www.youtube.com/watch?v=ud_aMTiNXL8">http://www.youtube.com/watch?v=ud_aMTiNXL8</a> |
| LionsForLambs       | <a href="http://www.youtube.com/watch?v=sa7nv8GXzYQ">http://www.youtube.com/watch?v=sa7nv8GXzYQ</a> |
| LionsForLambs       | <a href="http://www.youtube.com/watch?v=rs96KHI_A10">http://www.youtube.com/watch?v=rs96KHI_A10</a> |
| LionsForLambs       | <a href="http://www.youtube.com/watch?v=Rt6WJt-9KsU">http://www.youtube.com/watch?v=Rt6WJt-9KsU</a> |
| LionsForLambs       | <a href="http://www.youtube.com/watch?v=7UZBEIqvz5o">http://www.youtube.com/watch?v=7UZBEIqvz5o</a> |
| PalisadesMediaGroup | <a href="http://www.youtube.com/watch?v=PrEA5-fHY5Y">http://www.youtube.com/watch?v=PrEA5-fHY5Y</a> |
| PalisadesMediaGroup | <a href="http://www.youtube.com/watch?v=CNumNsmLEhU">http://www.youtube.com/watch?v=CNumNsmLEhU</a> |
| Palisadesmg         | <a href="http://www.youtube.com/watch?v=tWubcKKf2JA">http://www.youtube.com/watch?v=tWubcKKf2JA</a> |
| peacheslarue        | <a href="http://www.youtube.com/watch?v=K-10NFwv748">http://www.youtube.com/watch?v=K-10NFwv748</a> |
| peacheslarue        | <a href="http://www.youtube.com/watch?v=V7GEHXfNw7U">http://www.youtube.com/watch?v=V7GEHXfNw7U</a> |
| Pezcity             | <a href="http://www.youtube.com/watch?v=9UKcF97DZPQ">http://www.youtube.com/watch?v=9UKcF97DZPQ</a> |
| rubixkid            | <a href="http://www.youtube.com/watch?v=zvOmKf9RVRg">http://www.youtube.com/watch?v=zvOmKf9RVRg</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=ILSvWxUNd0c">http://www.youtube.com/watch?v=ILSvWxUNd0c</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=Mz1uCq-97U4">http://www.youtube.com/watch?v=Mz1uCq-97U4</a> |

|                     |   |
|---------------------|---|
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=W32XIsLkTPI">http://www.youtube.com/watch?v=W32XIsLkTPI</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=P0zbjCkSt3U">http://www.youtube.com/watch?v=P0zbjCkSt3U</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=WvYnAys1IAM">http://www.youtube.com/watch?v=WvYnAys1IAM</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=DmYPSP_aCLk">http://www.youtube.com/watch?v=DmYPSP_aCLk</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=HdLwCAJit18">http://www.youtube.com/watch?v=HdLwCAJit18</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=JS_JQsljVIl">http://www.youtube.com/watch?v=JS_JQsljVIl</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=TVQ02q_hluo">http://www.youtube.com/watch?v=TVQ02q_hluo</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=POzXWylPWTE">http://www.youtube.com/watch?v=POzXWylPWTE</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=REZgbJanMqs">http://www.youtube.com/watch?v=REZgbJanMqs</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=7ZeHbd1aIV8">http://www.youtube.com/watch?v=7ZeHbd1aIV8</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=_k5nEyuHRZc">http://www.youtube.com/watch?v=_k5nEyuHRZc</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=uQHkpWrXF_c">http://www.youtube.com/watch?v=uQHkpWrXF_c</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=BtSWAXgFeYE">http://www.youtube.com/watch?v=BtSWAXgFeYE</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=hgD94qi39JU">http://www.youtube.com/watch?v=hgD94qi39JU</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=ksNO4gPmPGg">http://www.youtube.com/watch?v=ksNO4gPmPGg</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=jZHwG7CyZFQ">http://www.youtube.com/watch?v=jZHwG7CyZFQ</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=m4AxvB_M1p4">http://www.youtube.com/watch?v=m4AxvB_M1p4</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=1li_v14DNcU">http://www.youtube.com/watch?v=1li_v14DNcU</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=39PuFOTjtk8">http://www.youtube.com/watch?v=39PuFOTjtk8</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=BULK1m9X8qQ">http://www.youtube.com/watch?v=BULK1m9X8qQ</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=jHglhwcwO8I">http://www.youtube.com/watch?v=jHglhwcwO8I</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=ZV3B_6A_NMk">http://www.youtube.com/watch?v=ZV3B_6A_NMk</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=5DEf-Q5Roqw">http://www.youtube.com/watch?v=5DEf-Q5Roqw</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=9gVvGbIlyB0">http://www.youtube.com/watch?v=9gVvGbIlyB0</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=SYK1a86qNS8">http://www.youtube.com/watch?v=SYK1a86qNS8</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=e40oaiS2T9g">http://www.youtube.com/watch?v=e40oaiS2T9g</a> |
| TheWeinsteinCompany | <a href="http://www.youtube.com/watch?v=vBx2gw0pqx0">http://www.youtube.com/watch?v=vBx2gw0pqx0</a> |

9. The practice of conducting viral marketing campaigns by uploading content to YouTube and other similar online services to promote music, television programs, and motion pictures is widespread. PMG, as well as most other online marketing companies, frequently upload video clips owned by their clients to online services such as YouTube and other video websites. To the best of my knowledge, in every instance in which PMG has uploaded content to internet websites, PMG was authorized to do so by the content owner.

10. Sometimes PMG's clients expressly directed PMG to use YouTube to market their content and sometimes clients implicitly endorsed the use of YouTube. On most occasions, PMG did not include information accompanying uploads to YouTube that would indicate that its clients had approved of the upload. By using this tactic, it

would appear to a user that the upload in question was "grass roots" in nature and not the product of corporate marketing. This is a common viral marketing tactic and is especially effective for reaching a younger demographic, which may be turned off by overt corporate marketing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 30 day of October, 2009 in Santa Monica, California.



Arthur Chan